

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

P.M. \_\_\_\_\_  
TIME AM \_\_\_\_\_

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SANTO LANZAFAME in his fiduciary capacity as a  
Trustee for the POINTERS, CLEANERS & CAULKERS  
WELFARE, PENSION & ANNUITY FUNDS, and as  
President of the BRICKLAYERS AND ALLIED  
CRAFTWORKERS LOCAL UNION NO. 1, B.A.C.I.U.,  
AFL-CIO,

Plaintiffs,

-against-

JAMISON CONTRACTORS, INC., MARK HOWELL,  
and JOHN and/or JANE DOE FIDUCIARY,

Defendants.  
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04 CV 4744 (ARR)

NOT FOR ELECTRONIC  
OR PRINT  
PUBLICATION

OPINION AND ORDER

ROSS, United States District Judge:

By order dated July 14, 2005, the court instructed plaintiffs to demonstrate to the court the propriety of its service upon Jamison Contractors, Inc. ("Jamison" or "Jamison Contractors"). As the court previously noted, plaintiffs served process on January 19, 2005 on a secretary at Jamison Masonry Restoration, LLC, a company apparently doing business at the address registered with the Pennsylvania Secretary of State for defendant Jamison. Plaintiffs' Ex. B; Supplemental Affirmation of William E. Nagel, Esq. Although Jamison's attorney apparently received notice of the suit, the secretary upon whom process was served indicated to the process server that Jamison Masonry has no affiliation with Jamison Contractors. Supplemental Affirmation of William E. Nagel, Esq.; Plaintiffs' Ex. B. In their letter dated

July 20, 2005, plaintiffs have not attempted to argue that this constituted proper service on Jamison.

Plaintiffs indicate, however, that they served Mark Howell, a named defendant and an officer of Jamison, on March 7, 2005. Although plaintiffs contend that they thus served Jamison under Pennsylvania law, plaintiffs have not sufficiently demonstrated that Jamison was properly served. While the affidavit of service dated January 21, 2005 purports to have effected service on Jamison, and contains a check in the box marked "Corporation," the affidavit of service dated March 7, 2005 purports to have effected service on Mark Howell, a named defendant, and contains a check in the box marked "Individual." Notwithstanding the court's instruction, plaintiffs have cited no authority for the proposition that serving a named defendant in his individual capacity constitutes proper service on a corporation of which that defendant is an officer. It appears that the statute of limitations has not yet run on plaintiffs' claims. Textile Workers Pension Fund v. Findlay Industries, Inc., No. 97 Civ. 9277 (HB), 1998 WL 788795, \*1 (S.D.N.Y. Nov. 10, 1998); Trustees of the National Elevator Industry Pension v. Lutyk, 140 F.Supp.2d 407, 414 (E.D.Pa. 2001). The court thus directs plaintiffs, if they wish to pursue entry of default, to perfect service on Jamison.

SO ORDERED.

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Allyne R. Ross  
United States District Judge

Dated: July 21, 2005  
Brooklyn, New York

SERVICE LIST:

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**cc:** Robert C. Heinemann, Clerk of the Court